

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2025

DOCKET NUMBER: AR20240008946

APPLICANT REQUESTS:

- in effect, non-regular retirement from the Army National Guard (ARNG) in lieu of physical disability separation with severance pay
- personal appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Joint Force Headquarters – Georgia Memorandum, 16 November 2021
- DD Form 108 (Application for Retired Pay Benefits), 17 November 2021
- Department of Veterans Affairs (VA) letter, 31 October 2022
- Georgia Department of Defense, Office of the Adjutant General letter, 22 March 2024
- Member of Congress email correspondence with the Army Review Boards Agency (ARBA), 30 July 2024
- Privacy Release Form

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He is requesting a status change from active duty separation to a retirement designation. He was medically separated from a Title 10 mobilization status in the Georgia ARNG. They were then in a Title 10 status at Fort Stewart, GA.

b. At that time, he took a lump sum severance because he was unaware it would negatively affect his ARNG retirement benefit. He has since paid back that severance and wishes to receive his ARNG retirement benefits. Since the VA recouped 100 percent of his separation pay, he is qualified for retirement. He received a zero sum debt letter from the VA and has submitted it to the Defense Finance and Accounting Service (DFAS).

c. It has been about 3 years since filing for retirement for the first time and about 1 year since his second application. If he could get help to expedite his request it would be appreciated.

3. After two prior periods of honorable service in the Regular Army, from 23 January 1976 through 28 November 1977, and from 4 November 1981 thorough 10 December 1981, and a period of service in the U.S. Army Reserve (USAR) Control Group (Reinforcement), from 11 December 1981 through 25 November 1985, the applicant enlisted in the ARNG on 25 February 1988.

4. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was ordered to active duty in support of Operation Iraqi Freedom as a member of the ARNG on 6 December 2004.

5. A DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows:

a. A PEB convened on 7 December 2005, while the applicant was on a temporary tour of active duty as a member of the ARNG, and he was found physically unfit with a recommended combined rating of 10 percent and that his disposition be separation with severance pay.

b. His unfitting conditions were chronic bilateral foot pain and bilateral shoulder pain with multiple associated diagnoses (right sesamoiditis, left plantar fasciitis, right metatarsalgia, left Achilles tendonitis), 10 percent.

c. On 29 December 2005, the applicant signed the form indicating he was advised of the findings and recommendations of the PEB and concurred, waiving a formal hearing of his case.

6. The applicant's DD Form 214 shows:

a. He was honorably discharged on 9 January 2006, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay, with corresponding Separation Code (JFL).

b. He was credited with 1 year, 1 month, and 4 days of net active service this period; 9 years, 7 months, and 16 days of total prior active service; and 16 years, 7 months, and 2 days of total prior inactive service.

c. Item 18 (Remarks) show he was awarded disability severance pay amounting to \$60, 638.40.

7. The applicant's National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows:

a. He was honorably discharged on 10 January 2006, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 8-26j, due to medical unfitness for retention.

b. He was not transferred to the Retired Reserve.

c. He was credited with 17 years, 10 months, and 16 days of net service this period; 5 years, 2 months, and 19 days of prior Reserve component service; 2 years, 11 months, and 12 days of prior active Federal service; and 18 years, 10 months, and 3 days of total service for retired pay.

8. The Adjutant General, State of Georgia Orders 088-094, 29 March 2006, honorably discharged the applicant from the ARNG effective 10 January 2006 under the provisions of National Guard Regulation 600-200, paragraph 8-26j, due to disability with severance pay, with a rating of 10 percent, and an assignment loss reason code of MG (Medical unfitness for retention).

9. An NGB Form 23B (ARNG Retirement Points History Statement), 19 April 2006, shows the applicant completed 18 years, 10 months, and 3 days of creditable service for retired pay effective 10 January 2006.

10. A review of the U.S. Army Human Resources Command (AHRC) Soldier Management System (SMS) shows the applicant was honorably involuntarily discharged from the ARNG on 10 January 2006, due to medical unfitness for retention and his record was archived, without his transfer to the Retired Reserve.

11. A Joint Force Headquarters – Georgia Memorandum, 16 November 2021, more than 15 years after his ARNG discharge, notified the applicant of his eligibility for retired pay for non-regular service based on his completion of at least 15 years, but fewer than 20 years of qualifying service and that would be eligible for retired pay upon his application at age 60.

12. A DD Form 108 shows on 17 November 2021, the applicant applied for retired pay benefits, with a request for retired pay to begin on 19 September 2018. The form shows his present assignment was the Retired Reserve, which is not reflected elsewhere in records.

13. An AHRC letter, 6 April 2022, replied to the applicant's DD Form 108 submission.

a. He was informed that in order to be eligible for retired pay at age 60, under Title 10, U.S. Code, Sections 12731 – 12737, a Reserve component Soldier must not have elected to receive severance pay in lieu of non-regular retired pay.

b. An audit of his military records shows he received disability severance pay in January 2006, thus severing all ties with the military. Accordingly, he was ineligible to receive retired pay. Therefore, the AHRC Gray Area Retirements Office was denying his application for retired pay.

14. A VA letter, 31 October 2022, informed the applicant that the total amount of his military severance pay had been recouped by the VA, with a current balance of \$0.00.

15. Georgia Department of Defense, Office of the Adjutant General letter, 22 March 2024, advised the applicant's Member of Congress that the applicant was not eligible for medical retirement.

a. He completed a Medical Evaluation Board (MEB) in December 2005, which deemed him to be medically unfit for continued service and gave him a 10 percent disability rating. The MEB gave him the disposition of separation with severance pay, meaning he was not to be retired. This disposition is also reflected on his NGB Form 22.

b. The applicant applied for a retirement annuity with AHRC, and his application was denied due to his receipt of disability severance pay. He has indicated he repaid the \$60,638.40, that he was paid; however, this repayment entitles him to receive disability pay from the VA and not retirement pay from DFAS.

c. The applicant was advised to apply to the ABCMR if he desired to attempt to obtain a retirement designation rather than a separation designation.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy and regulation. Upon review of the applicant's petition, and the available military record the

Board concurred with AHRC finding the applicant is ineligible to receive retired pay based on his election to receive severance pay in lieu of non-regular retired pay. The Board determined there is a lack of evidence of an error or injustice. Based on this, his request for a non-regular retirement from the ARNG is denied.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



X //SIGNED//

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CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).
3. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.
4. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify, assign, utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major Army National Guard (ARNG) and Army National Guard of the United States enlisted Soldiers. Paragraph 8-26j, in effect at the time, provides for the separation of Soldiers found medically unfit for retention per Army Regulation 40-501 (Standards of Medical Fitness).
5. Title 10 USC, section 12731b (Special rule for members with physical disabilities not incurred in the line of duty), enacted 23 October 1992, provides in pertinent part that in the case of a member of the Selected Reserve of a Reserve Component (RC) who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for the purpose of Section 12731 of this title, determine to treat the member as having met the service requirement and provide the member notification required if the member completed at least 15 years, but less than 20 years of qualifying service for retirement purposes as of 1 October 1991. This special provision of the law is applicable only to members who are medically disqualified for continued service in an RC.

6. Army Regulation 135-180 (ARNG and Reserve – Retirement for Regular and Non-Regular Service), in effect at the time, prescribes policy and procedures governing the granting of retired pay for non-regular service to Soldiers in the ARNG, Army National Guard of the United States (ARNGUS) and the U.S. Army Reserve (USAR).

a. Chapter 2 (Criteria for Retired Pay) provides the age and service requirements, basic qualifying service requirements, and other service requirements to receive retired pay.

b. Paragraph 2-1 (Age requirements) shows to be eligible for retired pay, an individual must have attained the minimum age prescribed by law, which is age 60.

c. Paragraph 2-2 (Basic qualifying service requirements) states to be eligible for retired pay at or after the age specified in paragraph 2-1, an individual need not have military status at the time of application, but must have completed one of the following:

(1) A minimum of 20 creditable years of qualifying service computed under Title 10, U.S. Code section 12731 (f), or

(2) At least 15 and less than 20 years of qualifying service, computed under Title 10 U.S. Code, section 12732, if the individual is to be separated because the Soldier has been determined unfit for continued Selected Reserve service, and none of the conditions in Title 10 U.S. Code, section 12731 (b) exist.

d. Paragraph 2-3 (Other service requirements) shows numerous additional Army Reserve component requirements, to include that an applicant must not have elected to receive disability severance pay in lieu of non-regular retired pay.

7. Army Regulation 140-10 (Assignments, Attachments, Details, and Transfers), provides policy and procedures for assigning, attaching, removing, and transferring USAR Soldiers. Chapter 6 (Transfer to and from the Retired Reserve) states assignment to the Retired Reserve is authorized, with the exception of enlisted Soldiers subject to involuntary separation. Eligible Soldiers may be allowed to transfer to the Retired Reserve if the following applies:

a. They are entitled to receive retired pay from the U.S. Armed Forces because of prior military service or disability.

b. They have 20 qualifying years of service for retired pay at age 60 and are eligible to receive the notification of eligibility (NOE) of Retired Pay at age 60 (20-year Letter).

c. They are medically disqualified for retention in an active status, not as a result of their own misconduct, and have completed at least 15 qualifying years of service, but

less than 20 qualifying years of service for retired pay and are eligible to receive the NOE for Retired Pay at Age 60 (15-Year Letter). The 15-Year NOE pertains only to members of the Selected Reserve and that loss of qualification to continue in the Selected Reserve must be solely due to medical disqualification.

d. They have completed a total of 20 years of active service in the U.S. Armed Forces.

8. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//